

**OPEN RECORDS AND MEETINGS OPINION
2003-O-12**

DATE ISSUED: September 8, 2003

ISSUED TO: Fargo City Commission

CITIZEN'S REQUEST FOR OPINION

On May 1, 2003, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Michael J. Williams asking whether the Fargo City Commission violated N.D.C.C. § 44-04-20 by adding an item to the agenda at a regular meeting.

FACTS PRESENTED

On April 28, 2003, the Fargo City Commission (Fargo) held a regular meeting. The notice and agenda for the meeting was posted and distributed shortly after noon on Thursday, April 24, 2003. Mr. Williams indicated consideration of the management contract for the Fargodome was not on the agenda posted, distributed, and published in the Fargo Forum but the item was discussed at the April 28 meeting.

It is the policy of the Commission, adopted by resolution, that all agenda items or issues to be considered at regular meetings be submitted to the City Commission office prior to 12:00 noon on the Thursday preceding the meeting. According to the resolution, any items not meeting the deadline may, with the consent of a majority of the City Commissioners, be considered as an extra agenda item.

According to the Fargo mayor, the Fargodome management contract issue was not included on the agenda because it was not submitted to the City Commission office by the noon deadline. The mayor indicated it was decided to ask the city commission to consider the issue as an extra agenda item at the April 28, 2003, meeting. At the beginning of the April 28 meeting, after roll was taken, a motion was made and passed to approve the order of the agenda, adding as an extra item to be heard at the end of the regular agenda consideration of the Fargodome management contract. Fargo Board of City Commissioners, Permanent Minutes, page 651, April 28, 2003 (Permanent Minutes).

ISSUE

Whether the Fargo City Commission violated N.D.C.C. § 44-04-20 by discussing the Fargodome management contract at the April 28, 2003, regular meeting when it was not included in the notice and agenda prior to the meeting.

ANALYSIS

Public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1). Notice of a regular meeting must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. N.D.C.C. § 44-04-20(2). While all topics anticipated to be considered at a meeting of a governing body of a public entity must be included on the agenda and notice compiled before the meeting, N.D.C.C. § 44-04-20(2) does not restrict the items that may be discussed at a regular meeting. N.D.A.G. 98-O-21, N.D.A.G. 99-O-08. Therefore, new agenda items not anticipated at the time the agenda was prepared may be added to the agenda during a regular meeting. See N.D.C.C. § 44-04-20(2),(6); N.D.A.G. 98-O-21; N.D.A.G. 99-O-08. From the time a regular meeting is convened until the meeting is adjourned, a governing body is free to discuss any item of public business regarding the entity. N.D.A.G. 99-O-08. Cf. N.D.C.C. § 44-04-20(6) (topics for consideration at an emergency or special meeting are limited to those included in the notice) and N.D.A.G. 99-O-08 (topic may not be discussed if it was deliberately omitted from the tentative agenda).

According to the Fargo mayor the typed agenda went out shortly after noon on Thursday. At the time the agenda and notice was drafted, it included all of the issues identified before the Thursday noon deadline. Because the Fargodome issue was not submitted for consideration by the deadline, city staff did not anticipate it would be discussed at the meeting at the time the notice and agenda were prepared. The notice and agenda prepared and posted by Fargo met the requirements of N.D.C.C. § 44-04-20(2).

Mr. Williams asserted that even if the Fargodome issue was not submitted by the noon deadline, Fargo should have amended the notice and agenda after it came to Fargo's attention. He suggested there was adequate time to amend the agenda prior to its publication in The Forum on Sunday, but chose not to in order to intentionally keep the issue from the public. In any opinion issued under N.D.C.C. § 44-04-21.1 the attorney general shall base the opinion on the facts given by the public entity. N.D.C.C. § 44-04-21.1(1). Accordingly, this office must rely on the city's assurance that the Fargodome contract issue was not deliberately left off the agenda, and the only reason it was not on the published agenda was because it was not submitted by the deadline. Although it may have been possible for Fargo to amend the notice and agenda, it was not

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legally required to do so. In addition, there is no requirement to publish notices of meetings in the newspaper.

The final issue is whether Fargo violated the open meetings law by discussing the Fargodome management contract at the end of the meeting when most of the press was gone. Mr. Williams alleges Fargo did so in order to limit public discussion and input. As discussed previously, the law provides for a certain amount of flexibility with regard to the agenda at regular meetings. In this case, although the item was discussed at the end of the meeting, the Fargodome issue was announced and added to the agenda at the very beginning of the meeting when the order of the agenda was approved. Permanent Minutes at 651. Everyone present was put on notice that the Fargodome management contract was being added to the agenda. If the members of the public or the press left the meeting before it ended, they did so at their own risk. See, N.D.A.G. 99-O-08. Also, the public's right to attend an open meeting does not include the right to give input at the meeting. See N.D.A.G. 99-O-07, N.D.A.G. 98-O-17, N.D.A.G. 98-F-11.

Therefore, it is my opinion that Fargo did not violate N.D.C.C. § 44-04-20 by discussing an issue at its regular meeting that was not included on the notice and agenda sent out four days prior to the meeting.

CONCLUSION

The Fargo City Commission did not violate the N.D.C.C. § 44-04-20 by discussing an item at its April 28, 2003, regular meeting that was not included in the notice and agenda sent out prior to the meeting.

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